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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/759,159	01/16/2001	Akira Yamaguchi	100186-00010	9800
7590	07/15/2004			EXAMINER PIZARRO, RICARDO M
ARENT FOX KINTNER PLOTKIN & KAHN, PLLC Suite 600 1050 Connecticut Avenue Washington, DC 20036-5339			ART UNIT 2661	PAPER NUMBER 3
DATE MAILED: 07/15/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/759,159	YAMAGUCHI ET AL.
	Examiner	Art Unit
	Ricardo M. Pizarro	2661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 16 January 2001.  
 2a) This action is **FINAL**.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-14 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-8 is/are rejected.  
 7) Claim(s) 9-14 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 16 January 2001 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Objections***

1. Claims 1-14 are objected to because of the following informalities and it is suggested to applicant:

In claim 1 line 6 and line 9 replace “a” with –said-.

In claim 2 line 2 and line 3 replace “a” with –said-.

In claim 4 line 4 replace “a” with –said-.

In claim 9 line 2 delete the first occurrence of “the” in line 6 delete “the”, in line 8 replace “a” with –said-, in line 10 insert “said” before –each-.

In claim 10 line 3 replace “a” with –said-, in line 5 insert ‘said” before –packet-, in line 7 replace “a” with –said-, in line 8 replace the first occurrence of “the” with –a-.

In claim 14 line 3 replace “a” with –said-, in line 4 replace “a” with –another-, in line 5 replace “a” with –said-.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

2. Claims 1, 3-4, 6-8 are rejected under 35 U.S.C. 102(a) as being anticipated by Padovani.

US patent No. 6,574,211 ( Padovani et al) discloses a Method and apparatus for high rate packet data transmission comprising: a mobile communication system having a plurality

of radio packet channels having different transmission rate from each other between a base station and a mobile station ( mobile system of Fig. 1 including a plurality of base stations and mobile stations, col 5 lines 65-67), said mobile station comprising: means for measuring a signal quality of a receive signal from base station ( mobile station measures quality of received signals, col 6 lines 58-61), means for assigning packet rate relating to said signal quality thus measured ( mobile station request the highest data rate that measured signal can reliably support , col 4 lines 35-38), means for transmitting said packet rate to base station ( mobile station transmits the data rate request on the DRC channel, col 5 lines 44-50) and data terminal for transmitting and receiving data to and from the base station with said assigned packet rate ( mobile unit is a data terminal capable of transmitting and receiving at assigned data rate) as in claim 1; wherein said signal quality is defined by receive level of a pilot signal which is transmitted by the base station ( col 4 line 31), as in claim 3; wherein said signal quality by propagation loss L which is calculated by transmit power of a pilot signal at a base station and a receive power of said pilot signal at mobile station ( col 3 lines 20-22), as in claim 4; wherein said signal quality is defined by interference level I at the mobile station from adjacent base stations( col 4 line 30), as in claim 7; wherein said signal quality is defined by receive SIR of a pilot signal transmitted by the base station ( col 4 lines 28-30), as in claim 8.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Padovani.

Padovani did not specifically disclose said signal quality being defined by distance between a base station and a mobile station , as in claim 2; said signal quality being defined by distance between the mobile station and a base station which said mobile station belongs and an adjacent base station , as in claim 5. >

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention that distance would have been a factor affecting propagation loss therefore signal quality in a mobile system with the motivation of improving utilization of the forward and reverse link capacity in the data communication system.

***Allowable Subject Matter***

5. Claims 9-14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claim. Please also notice objection to claims under 37 CFR 1.75

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- US patent No. 6,381,233 ( Sunaga) discloses a communication transmitter and receiver and CDMA mobile system.
- US patent No. 5,604,730 (Tiedemann ) discloses a remote transmitter power control.
- US patent No. 6,542,736 (Parkvall et all) discloses an efficient link adaptation system.
- Publication PDT 6800 Series portable data terminal.

7. **Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks

Washington, D.C. 20231

**or faxed to:**

(703) 872-9314

(for formal communications intended for entry, for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington. VA., Sixth Floor (Receptionist).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Ricardo Pizarro** whose telephone number is (703) 305-1121. The examiner can normally be reached on Monday-Friday from 9:00 AM to 5:30 PM. The fax number for this Group is (703) 872-9314.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Douglas Olms**, can be reached on (703) 305-4703.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-4700.

6/30/2004

*Ricardo M. Pizarro*